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OFFICE OF PETITIONS

In re Application of :
Toda et al. :
Application No. 10/688,881 : DECISION ON APPLICATION
Filed: October 21, 2003 : FOR
Atty Docket No. 016907-1576 : PATENT TERM ADJUSTMENT
:

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b)," filed December 8, 2005. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from zero (0) days to two hundred forty-eight (248) days.

The application for patent term adjustment is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is two hundred forty-eight (248) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On September 12, 2005, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 0 days. On December 8, 2005, applicants timely submitted an application for patent term adjustment (with required fee)¹. Applicants assert entitlement

¹ PALM records indicate that the Issue Fee payment was also received on December 8, 2005.

to a period of adjustment of 248 days for Office delay in taking action in response to their response filed September 7, 2004.

Applicants state that the patent issuing from the application is not subject to a terminal disclaimer.

A review of the application history reveals that no response to the Office action mailed August 4, 2004 was considered timely filed by the Office and the application became abandoned. Applicants were advised of the abandonment by notice mailed April 6, 2005. In response, on April 12, 2005, applicants filed a petition to withdraw the holding of abandonment. It is specifically noted that the petition to withdraw the holding of abandonment was filed within two months from the mailing date of a notice of abandonment. See § 1.704(c)(4). Moreover, by decision mailed August 12, 2005, the petition was granted on the basis that applicants had shown that a proper response was filed on September 7, 2004 (the first business day after the weekend and a federal holiday).

In view thereof, it is concluded that applicants did not fail to engage in reasonable efforts to conclude processing or examination of the application by delaying in replying to the Office action. Moreover, applicants are correct that given the showing of receipt of applicants' response in the Office on September 7, 2004, the application is entitled to a period of adjustment for Office delay. The Office did not take action in response until September 12, 2005. Pursuant to § 1.702(a)(2) and § 1.703(a)(2), the period of adjustment is 248 days, counting the number of days in the period beginning on the day after the date that is four months after the date a reply under § 1.111 was filed, January 8, 2005 and ending on the date of mailing of either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, September 12, 2005.

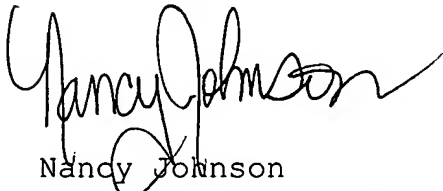
In view thereof, the correct determination of patent term adjustment at the time of the mailing of the notice of allowance is two hundred forty-eight (248) days.

The \$200.00 fee set forth in 37 CFR 1.18(e) has been charged to petitioner's Deposit Account, as authorized. (No fee by check was enclosed with petition). No additional fees are required.

The application is being forwarded to the Office of Patent Publication so that a patent can be issued. The Issued Patent

will include any period of adjustment accrued for Office failure to issue the patent within four months of the date of payment of the issue fee and satisfaction of all outstanding requirements.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson". The signature is fluid and cursive, with the first name "Nancy" being more prominent than the last name "Johnson".

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of Revised PAIR Screen